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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) SON-2895															
	Application Number 10/751,530-Conf. #3306	Filed January 6, 2004															
	First Named Inventor Junichi Komagata																
	Art Unit 2465	Examiner A. M. Sol															
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <table><tr><td><input type="checkbox"/></td><td>applicant /inventor.</td><td rowspan="2"> _____ Signature</td></tr><tr><td><input type="checkbox"/></td><td>assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</td></tr><tr><td><input checked="" type="checkbox"/></td><td>attorney or agent of record. Registration number 40,290/47,255</td><td>Christopher M. Tobin/Brian K. Dutton _____ Typed or printed name</td></tr><tr><td><input type="checkbox"/></td><td>attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34. _____</td><td>(202) 955-3750 _____ Telephone number</td></tr><tr><td></td><td></td><td>July 14, 2010 _____ Date</td></tr></table> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p>				<input type="checkbox"/>	applicant /inventor.	 _____ Signature	<input type="checkbox"/>	assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)	<input checked="" type="checkbox"/>	attorney or agent of record. Registration number 40,290/47,255	Christopher M. Tobin/Brian K. Dutton _____ Typed or printed name	<input type="checkbox"/>	attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34. _____	(202) 955-3750 _____ Telephone number			July 14, 2010 _____ Date
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		July 14, 2010 _____ Date															
<input checked="" type="checkbox"/> *Total of 1 forms are submitted.																	



Docket No.: SON-2895
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Junichi KOMAGATA

Application No.: 10/751,530

Confirmation No.: 3306

Filed: January 6, 2004

Art Unit: 2465

For: DATA TRANSMITTING APPARATUS AND
DATA TRANSMITTING METHOD

Examiner: A. M. Sol

REQUEST FOR PRE-APPEAL BRIEF PANEL REVIEW OF REJECTION

MS AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This is in full and timely response to the Office Action dated February 17, 2010.

i. Paragraph 2 of the Final Office Action indicates a rejection of claims 27-28, 31-33, 35-40, 42-44, and 48 under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,560,230 (Li).

A. Li fails to disclose, teach, or suggest confirming presence or absence of a real time packet request.

Claim 27 provides for said real time packet request commanding a stream transmitting portion to schedule a transmission of a real time packet.

Here, Li arguably discloses that after the packets are classified they can be scheduled for transmission (Li at column 6, lines 33-34).

Scheduler 50 schedules the transmission of the packet out an output port (Li at column 8, lines 29-30).

However, Li fails to identify any request that commands the scheduler 50 to schedule the transmission of a packet.

Specifically, FIG. 5 is a schematic view of apparatus for scheduling packets according to the invention; FIG. 6 is a flow chart illustrating a method according to the invention by which leaf scheduling engines may select and transmit packets; and FIG. 6A is a flow chart illustrating a method according to the invention by which non-leaf scheduling engines may select and transmit packets (Li at column 5, lines 1-11).

As shown in FIGS. 5 and 6, a scheduler 50 receives each incoming packet 51 together with a class identifier 53 generated by a classifier 52 (**step 102**) (Li at column 8, lines 34-36). Here, Step 102 of Li fails to identify any request that commands the scheduler 50 to schedule the transmission of a packet.

Scheduler 50 then places each packet in a queue 55 (**step 104**) (Li at column 8, lines 36-37). Here, Step 104 of Li fails to identify any request that commands the scheduler 50 to schedule the transmission of a packet.

In a preferred implementation of scheduler 50, each leaf scheduling engine 60 calculates a start time S and a finish time F for packets 51 at the heads of its queues 55 (**step 106**) (Li at column 10, lines 16-19). Here, Step 106 of Li fails to identify any request that commands the scheduler 50 to schedule the transmission of a packet.

According to the preferred embodiment of the invention, each leaf scheduling engine 60 selects a group of eligible packets 51 from the group of all packets 51 at the heads of the queues 55 in the group 56 associated with that leaf scheduling engine 60 (**step 110**) (Li at column 11, lines 3-7). Here, Step 110 of Li fails to identify any request that commands the scheduler 50 to schedule the transmission of a packet.

In preferred embodiments of the invention, the leaf scheduling engine 60 will select for transmission the eligible packet 51 which meets a selection criterion (**step 114**) (Li at column 11,

lines 35-37). Here, Step 114 of Li fails to identify any request that commands the scheduler 50 to schedule the transmission of a packet.

Eventually the selected packet will be passed to the parent of the leaf scheduling engine 60 (step 122). (Li at column 11, lines 58-60). Here, Step 112 of Li fails to identify any request that commands the scheduler 50 to schedule the transmission of a packet.

At that time, the virtual time V of the leaf scheduling engine 60 will be updated (step 125) and leaf scheduling engine 60 will select a new packet 51 (step 114) from a queue 55 for eventual transmission (Li at column 11, lines 60-63). Here, Step 125 of Li fails to identify any request that commands the scheduler 50 to schedule the transmission of a packet.

Any packet in the eligible set which does not have the highest priority is removed from the set (step 118) (Li at column 13, lines 13-15). Here, Step 118 of Li fails to identify any request that commands the scheduler 50 to schedule the transmission of a packet.

After an eligible set has been constructed then the parent scheduling engine 60 selects one packet to pass on next to its parent scheduling engine according to a selection criterion (step 114 or 120) (Li at column 13, lines 24-27). Here, Step 114 or 120 of Li fails to identify any request that commands the scheduler 50 to schedule the transmission of a packet.

FIG. 8 is a flow chart illustrating a simplified embodiment of the invention (Li at column 5, lines 15-16).

Simplified method 200 begins by selecting all high priority packets which are currently queued (step 204) (Li at column 13, lines 41-42). Here, Step 204 of Li fails to identify any request that commands the scheduler 50 to schedule the transmission of a packet.

The method continues by passing the one high priority packet having the smallest finish time F (step 206) (Li at column 13, lines 42-44). In the alternative, step 206 could pass the packet

having the smallest start time S (Li at column 13, lines 44-45). Here, **Step 206 of Li fails to identify any request that commands the scheduler 50 to schedule the transmission of a packet.**

If there are no queued high priority packets then the method selects all queued low priority packets (**step 208**) and continues by forwarding the low priority packet with the smallest finish time F (**step 210**) (Li at column 13, lines 45-49). Here, **Steps 208 and 210 of Li fail to identify any request that commands the scheduler 50 to schedule the transmission of a packet.**

As a consequence, Li **fails** to disclose, teach, or suggest confirming presence or absence of a real time packet **request**.

Thus, Li **fails** to disclose, teach, or suggest a step of confirming presence or absence of a real time packet **request**, said real time packet **request** commanding a stream transmitting portion to schedule a transmission of a real time packet.

B. Li fails to disclose, teach, or suggest confirming presence or absence of a non-real time packet request.

As noted hereinabove, Li **fails to identify any request that commands the scheduler 50 to schedule the transmission of a packet.**

As a consequence, Li **fails** to disclose, teach, or suggest confirming presence or absence of a non-real time packet **request**.

Thus, Li **fails** to disclose, teach, or suggest a step of confirming presence or absence of a non-real time packet **request** only after confirming the absence of said real time packet **request**, said non-real time packet **request** commanding said stream transmitting portion to schedule a transmission of a non-real time packet.

ii. Paragraph 4 of the Final Office Action indicates a rejection of claims 29, 30, 34, 41, and 45-47, under 35 U.S.C. 103(a) as being unpatentable over Li in view of U.S. Patent Application Publication No. 2004/0114516 (Iwata).

A. Iwata is unavailable as prior art.

Arguments regarding Iwata presented on page 12 of the Response to Final Office Action of May 20, 2010 are incorporated by reference. Additional Arguments are provided hereinbelow.

The above-identified application was filed on January 6, 2004. Iwata has a publication date of June 17, 2004. However, the filing date for the above-identified application of January 6, 2004 is earlier than the publication date of June 17, 2004 for Iwata.

Iwata has a PCT filing date of June 28, 2001. However, Iwata is in the national stage (35 U.S.C. 371) of an International Application filed on or after November 29, 2000 and which was not published in English under PCT Article 21(2).

According to 35 U.S.C. 102 (e), no benefit of the international filing date (nor any U.S. filing dates prior to the IA) is given for 35 U.S.C. 102 (e) prior art purposes if the IA was published under PCT Article 21(2) in a language other than English, regardless of whether the international application entered the national stage. M.P.E.P. §706.02(f)(1).

Thus, Iwata appears to be unavailable as prior art and that the rejection of the claims using this reference should be withdrawn as a result.

Dated: July 14, 2010

Respectfully submitted,

By 

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